Supreme Court, U. S.
FILED
SEP 6 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1978

No. 78-3834

REV. DIANNE FENNELL,

Appellant,

vs.

ROSALIE BUTLER, Councilwoman; DONALD D. WOZNIAK; HARRIET LANSING, City Attorney; PHILIP B. BRYNE, Deputy City Attorney; JAMES M. CAMPBELL; and the MINNESOTA STATE BOARD OF MEDICAL EXAMINERS,

Appellees.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
EIGHTH CIRCUIT

Rev. Dianne Fennell
Attorney Pro Se
Appellant -Petitioner
1612 Randolph Avenue
St. Paul, Minnesota 55105

1978

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IN THE

Supreme Court of the United States

OCTOBER TERM 1978

NO.

REVEREND DIANNE FENNELL,

Petitioner,

v.

ROSALIE BUTLER, Councilwoman, DONALD D. WOZNIAK, HARRIET LANSING, City Attorney, PHILIP B. BRYNE, Deputy City Attorney, JAMES M. CAMPBELL, and the MINNESOTA STATE BOARD OF MEDICAL EXAMINERS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THIS COURT:

Rev. Dianne Fennell, prays that a Writ of Certiorari issue to review a judgement of the United States

Court of Appeals for the Eighth Circuit entered on May 18, 1978, a Petition for Rehearing subsequently being denied by Order of June 15, 1978, and June 26, 1978, The Eighth Circuit Court of Appeals Mandate issued.

OPINIONS BELOW

The opinion and Order of The United States District Court for the State of Minnesota, Third Division, entered on January 9, 1978 , is reproduced in the Appendix A (App.1), the opinion and Judgement of The United States Court of Appeals For The Eighth Circuit, entered May 18, 1978, included here Appendix B, and the Order of that Court denying Petition is included here as Appendix C, The Eighth Circuit Court of Appeals Mandate issued, is reproduced in the Appendix D, (App.7-9) Reproduced in the Appendix E, (App.10-11)Notice of Appeal to The Eighth Circuit Ct. of Appeals, Appendix F, (App.12), Notice of Appeal.

JURISDICTION

The jurisdiction of this Honorable

Court to issue a Writ of Certiorari in This case the Judgement of the United States District Court, Third Division of Minnesota. was entered on January 9, 1978, is grounded upon 28 U.S.C. §2201 & 2202; 1331, 1343 (1-4), 42 U.S.C.§1981-1995 and 42 U.S.C. § 2000 et seq.(1964 Fed. Civil Rights Act).

QUESTIONS PRESENTED

This is a Case by Rev. Dianne Fennell, from an Order and Judgement of the United States Court of Appeals, For The Eighth Circuit, dated May 18, 1978, that the U. S. District Court & Appellate Courts errored in their findings.

1. Should the admitted association of D. Wozniak & J. Campbell & their involvement in this case be considered a conspiracy to deny plaintiff & others Federal Civil Rights?
2. Should the affidavit submitted by Defendant Wozniak, be accepted as truthfull, or as a device to get defendant Wozniak out of the case?
3. Should the Constitutional question posed by this action requires that all aspects of this case be determined at the trial?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case, arising under the Constitution of the United States, the laws of the United States, the Constitution.

The Vth and XIV Amendments to the Federal Constitution and laws of the state of Minnesota. Title 28 U.S.C. § 2201-2202; 1331, 1343 (1-4), Title 42 U.S.C. § 1981-1995and 42 § 2000 et seq., U.S.C. Art. 6 cl. 2; §§ 2000e- (a) (2) 2000e- 5 (g) I, II, III, & IV

STATEMENT OF CASE

This case rests on the premis of whether the St. Paul City Council especially one of it's members, Councilwoman Butler, can use her political office to enhance her own career & others by hiring a private lawyer D.D. Wozniak, and his employee James M. Campbell, to write ordinances which will abolish the business of massagist in the City of St. Paul, Minnesota. The Surpreme Court spoke out regarding this topic in Goldblatt v. Town of Hempstead, 1962, 369 U.S. 590, 8 L 2ed 130, 82 S. Ct. 987: "To justify a state in interposing its

authority in behalf of the public by the exercise of its police power. * * *."

Since this suit questions the constitutionlity of this Ordinance No. 16321 [1] and its encroachment upon indiciduals civil rights, as well as, the consequeces upon the public interests" by legislative action which is arbitary or without reasonable relation to some purpose within the competency of the state to effect." "The liberty protected by the 14th. Amendment to the Federal Constitution, * * *." Determination by the legislature of what constitutes proper exercise of police power is not final or conslusive, butis subject to supervision by the Courts." The Supreme Ct. stated the above: Robert T. Meyer v. State of Neb., 1923, 67 L. .ed 1042, 262 U.S. 390. Plaintiff, Rev. Fennell, proceeded to expose devious and nefarious plan by Ms. Butler, as a publicity stunt seeking political gain among things by this group composed of Donald D. Wozniak and James M. Campbell, among others. Ms. Butler Stated, according to St. Paul City Council minutes dated June 2, 1977, p. 56484, regarding C.F. No. 269171

"Councilwoman Butler, * * * said the

1-see complaint no. 1.

Ordinances are the result of many dedicated people and she thanked Mr. Don. Wozniak and Mr. James Campbell * * *."

Wozniak and Campbell based their defence that Mr. Wozniak was out of the country when the Ordinance No. 16321, was adopted To this I, quote from Ms. Butler's deposition taken on Aug. 15, 1977, by Earl P. Gray, before John E. Styribicki, a Notary Public in and for the County of Hennepin, State of Minnesota, as follows:

Page 4, lines 23-24 A, "The Amendment to the sauna ordinance was a part of a package of six ordinances."

Page 6 line 21-23, A. "There was a sauna ordinance drafted by Mr. Wozniak. I am not sure it came over with the other five. It might have come later. I am not sure. I just don't know."

Page 8, lines 1-2 A. "Because they had been doing some of the legal research for me and some of the case law research."

Page 9, lines 2-5, A. " I discussed with Mr. Wozniak the process that Mr. Tedesco had used and which we had orgnally thought about using. It was their opinion that we should reintroduce it the same was as part of the 6 ordinances."

Consequently by Ms. Butler's statements under Oath tie Wozniak and his emplyee Mr. Campbell to this case as fellow perpetrators. "The liability of a master arising out of an act of negligence committed by his servant does not

rest upon the ground that the master himself was negligent, but upon considerations of public policy, which hold him responsible for the acts of his agents when acting about his business." -- Helms v. Northren Pac. Ry. Co. 120 F. 389,(1903)."An employer is liable for the torts of his employees, even though no fault personally upon rests upon the employer." 1956, Laurie v. Mueller, 78 N.W. 2d 434, 248, Minn. "Where, although there was no evidence that newspaper publisher had knowledge of inaccuracies contained in feature article prepared by reporter's writing of feature was within scope of his employment for publisher, publisher was liable under traditional doctrines of respondeat supior for incasion of privacy of family which was subject of article." (1974), Cantrell v. Forest City Pub. Co., 95 S. Ct. 465, 419 U.S. 245, 42 L. Ed 2d 419, This holding should equally apply to Donald D. Woznaik and his employee Mr. James M. Campbell, as in Holladay v. Kennard, 79 U.S. 254, (1870), 12 Wall. 254, 20 L. Ed 390, U.S. N.Y. In the truthfullness of Mr. Wozniak's affiadavi 42 U.S.C.A.§§ 1985 (3), (1971), Griffin

v. Breckenridge, 91 S. Ct. 1790, 403 U.S. 88, 29 L. Ed. 2d 338, " Ku Klux Klan Act. affording civil remedy for conspiracy to deprive person or class of persons of equal protection of laws or equal privileges and immunities, covers private conspiracies." Ms. Butler states she contacted Mr. Wozniak by phone & had evidently seen him & Mr. Campbell. Because of this Ordinance their has been a violation set forth in plaintiff's complaint[2] and does violate Rev. Fennells and others constitutional rights. "Private party involved in conspiracy with state official may, even though not himself official of state, be liable under this section providing civil action for deprivation of rights." Adickees v. S.H. Kress & Co., N.Y. 1970, 90 S. Ct. 1598, 398 U.S. 144, 26 L. Ed. 2d. 142. Futher in Baxter v. Virkins, D.C. Colo. 1970, 311 F. Supp. 222.and in Scher v. Bd. of Town of West Orange, C.A.N.J., 1970,424 F. 2d. 741, Section 1343 of Title 28 and this section 42 §§ 1983, dealing with "civil rights and elective franchise' and a 'civil action for deprivation of rights' are not limited to dealing with racial or religious discrimination." Claim against

2-see complain no. 1 Rev. Fennell's

these defendants upon which relief can be granted. "Neither diversity of citizenship nor amount in controversy is prerequiste to federal court jurisdiction of cause of action asserted under this section 42 § 1983." Mini Cinema 16 Inc. of Fort Dodge v. Habhab, D.C. Iowa, 1970, 326 Supp. 1162."Under Title VII of the Civil Rights Act 1964, 42 USCS § 2000e et seq., which it requires equal employment opportunities, and whichprovides for consideration of employment-discrimination claims in several claims in several forms such as the Equal Employment Opportunity Commission, state and local agencies, and federal Courts, submission of a claim in one forum does not, in general, preclude a later submission to another." Alexander v. Gardner-Denver Co., 415 US 36, 39 L ed 2d 147, 94 S Ct. 1011. Wozniak, admits he worked on 6 ordinances, Ms. Butler, admits Wozniak helped doing legal resurch for her, it has been admitted that Wozniak's former employee O'Brien, left the office, in fall of 1976, however O'brien, was instructed to draft 6 types of ordinances, O'Brien, left Wozniaks officies in Dec. 1976, Wozniak, states (p.2 his affidavit line 3) that

he requested James M. Campbell in Feb. 1977, a new emplyee to draft 6 ordinances. (line 4 his affidavit), he states in April 1977, these 6 ordinances were submited to Ms. Butler's office, he admits that Ms. Butler between Tue. May 31, 1977 & June3, 1977 received written materials concerning a sauna ordinance proposed by another councilmember Tedesco. at this time she asked Wozniak to review the material & prepair a sauna ordinance Wozniak said he was out of the country, however Mr. Campbell, wasn'the was directed to comence the task of drafting the Ordinance 16321, a combination of 6 Butler, stated Mr. Tedesco submitted his ordinance in March, 1977, and then submitted his files to Ms. Butler, because she admitted she had been in process of composing a sauna ordinance and had some attys. doing research for her and she would make sure she would submit with the help of Mr. Wozniak & James M. Campbell, a sauna Ordinance that would illiminate saunas in the City of St. Paul.[3] Butler, states in her afidavit (p. 1 Ordinance 16321 was drafted) and then eventually adopted, on July 19, 1977, by the Council & public hearings,

3-see (affidavit of Roslie Butler, No.12.

"State and local laws cannot stand if they impede, burden or frustrate purposes of employment provisions of Civil Rights Act. USCA Const. Art. 6, cl. 2; Civil Rights Act. of 1964, §§701 et seq., 2000e-2(a) (2), 2000e-5(g),I,II, & III, IV all from Lindsay V. City of Seattle, Wash., 548 P. 2d 32 D.

REASONS FOR GRANTING WRIT

Petitioner maintains that her Federal Civil Rights and Federal Constitutional Rights, and others are being violated by the conspiracy between defendants Donald D. Wozniak, his office and his employee James M. Campbell, working with Ms. Butler, to abolish, injure appellants and others reputations, do away with their livelihood, the United States District Court of Minn. Third Division & the 8th. Circuit Ct. of Appeals, errored in their findings.

Futher maintained by appellant, lawyers shouldn't be maintained any specia priviledges, because of there unique relationship with the Court and it's officier's.

This action towards appellant, and others because of their sex station in life.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Writ of Certioari should be granted.

Respectfully submitted,

Rev. Dianne Fennell

/s/ Rev. Dianne Fennell

REV. DIANNE FENNELL
Attorney Pro Se
1612 Randolph Avenue
St. Paul, Minnesota 55105

A-1

APPENDIX

EXHIBIT-A-1

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION
3-77 Civ. 338
REV. DIANNE FENNELL,

Plaintiff,

v.

ROSALIE BUTLER, Councilwoman; DONALD D. WOZNIAK; HARRIET LANSING, City Attorney; PHILIP B. BYRNE, Deputy City Attorney; JAMES M. CAMPBELL; and THE MINNESOTA STATE BOARD OF MEDICAL EXAMINERS,

Defendants.

MEMORANDUM ORDER

REV. DIANE FENNELL appeared pro se.

Harriet Lansing, City Attorney, by THOMAS M. SIPKINS, Esq., Assistant City Attorney, appeared for defendants Butler, Lansing and Byrne.

ROBERT M. MAHONEY, Esq., Geraghty, O'Loughlin & Kenney, St. Paul, Minnesota, appeared for defendants Wozniak and Campbell.

Warren Spannaus, Attorney General, State of Minnesota, by ROBERT T. HOLLEY, Esq., Special Assistant Attorney General, Minneapolis, Minnesota, appeared for defendant Minnesota State Board of Medical Examiners.

Andrew W. Danielson, United States Attorney, by ELIZABETH A. EGAN, Esq., Assistant United States Attorney, St. Paul, Minnesota, appeared for Griffin Bell.

EXHIBIT-A-2

There was no appearance for defendants Butler, Lansing and Bryne.

The above-entitled action came on for hearing upon various motions of the plaintiff filed on December 13, 1977 and upon additional motions filed January 6, 1978.

Upon all the files, records and proceedings herein,

IT IS ORDERED That the plaintiff's motion filed December 13, 1977, seeking an order vacating and setting aside the hearing on November 18, 1977 and futher vacating this court's order of December 2, 1977, which motion the court will treat as a motion to recondider, be and hereby is in all things denied.

IT IS FUTHER ORDERED That the plaintiff's motion filed January 6, 1978 asking that this court deny all of defendants' motions for dismissal and/or summary judgement be and hereby is denied as moot, no decision being made herein on the pending motions of defendants Butler, Lansing and Bryne for summary judgement and on the motion of defendant Minnesota State Board of Medical Examiners for dismissal.

EXHIBIT A-3

IT IS FUTHER ORDERED That the defendants' motion filed January 6, 1978 seeking this Court'd order denying "all defendants Judge Alsop's Memorandum Order Dated December 2, 1977," which the court will consider as a motion to reconsider, be and hereby is denied.

IT IS FINALLY ORDERED That the plaintiff's motion filed January 6, 1978 seeking summary judgement against each and every defendant pursuant to Rule 56 be and hereby is in all things denied.

DATED: January 9, 1978

/s/ Donald D. Alsop
DONALD D. ALSOP
United States District Judge

EXHIBIT B-1

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 78-1067

Rev. Dianne Fennell,
Appellant,
v.
Rosalie Butler, Councilwoman; Donald D. Wozniak; Harriet Lansing, City Attorney; Philop B. Byrne, Deputy City Attorney; James M. Campbell; and the Minnesota State Board of Medical Examiners,
Appellees.

Appeal from the United States District Court for the District of Minnesota.

Submitted: May 18, 1978
Filed: May 24, 1978

EXHIBIT B-2

* * *

Before HEANEY, STEPHENSON and HENLEY, Circuit Judges.

PER CURIAM.

Dianne Fennell appeals from an order of the Dis rict Court granting summary judgment in favor of the appellees Donald D. Wozniak and James M. Campbell.

The District Court held that uncontroverted affidavits filed by the appellees established that neither had participated in an alleged conspiracy to deprive the appellant of any constitutional rights.

We affirm. The appellant cannot create a genuine issue of material fact by relying upon the bare allegations of her pleadings. Fed.R.Civ.P. 56 (e).

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

(Caption) EXHIBIT C-1

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

78-1067 September Term, 1977

Rev. Dianne Fennell, Appellant, vs. Rosalie Butler, etc., et al., Appellees.	Appeal from the United States District Court for the District of Minnesota

Petition of appellant pro se for rehearing filed in this cause having been consicered, it is now here ordered by this Court that the same be, and it is hereby, denied.

June 15, 1978

EXHIBIT D-1

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No 78-1067 September Term, 1977

Rev. Dianne Fennell,

Appellant,

vs

Rosalie Butler, Councilwoman, Donald D. Wozniak, Harriet Lansing, City Attorney, Philip B. Byrne, Deputy City Attorney, James M. Campbell and The Minnesota State Board of Medical Examiners,

Appellees.

APPEAL FROM the United States District Court for the District of Minnesota .

THIS CAUSE came on to be considered on the original designated record of the United States District Court for the District of Minnesota and briefs of the respective parties without oral argument.

EXHIBIT D-2

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

May 24, 1978

Costs taxed in favor of Appellees, Wozniak and Campbell:

Costs of printing 10 copies of brief: $267.00

Total costs of Appellees, Wozniak and Campbell, for recovery from Appellant in the U.S. District Court: $267.00

A true copy.

ATTEST Robert C. Tucker

Clerk, U.S. Court of Appeals, 8th Circuit

June 26, 1978

EXHIBIT D-3

NOTICE;

A copy of this document is this date Jun 29 1978 being sent to the following;
Fennell, Nord, Mahoney & Holley

Filed June 29 1978
Harry A. Sieben, Clerk
By /s/ Brenner
Deputy

EXHIBIT E-1

(Caption)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Rev. Dianne Fennell,
Plaintiff,

vs.

Rosalie Butler, etc., et al.,

Civil Action File No. 3-77-338
File No. 77-1782

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the above named Plaintiff, Reverend Dianne Fennell, Attorney Pro Se, hereby notify the above case, that she is appealing to the Eighth U.S. Circuit Court of Appeals, Judge Donald D. Alsop's Order Dated January 9, 1978, denying a summary judgment against each and every defendant.

Also because, Judge Donald D. Alsop, United States District Court Judge, District of Minnesota, ignored and failed to indicate the deposition of (plaintiffs'), Motion For

EXHIBIT E-2

Summary Judgement, against each and every defendant, in addition to other pecularities at that hearing.

Dated January 16, 1978

BY:

/s/ Rev. Dianne Fennell

REV. DIANNE FENNELL
Attorney Pro Se
1612 Randolph Ave
St. Paul, Minnesota
55105

EXHIBIT F-1/

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

Rev. Dianne Fennell, Appellant,

vs.

Rosalie Butler, etc., et al.,

Appellees.

File No. 78-1067

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the above named appellant Rev. Dianne Fennell, Attorney Pro Se, hereby notify the above named counselors for the Appellees, that she is appealing to The United States Supreme Court, Order dated June 15, 1978, denying Petition for rehearing and the Judgement of this Court's , dated June 29, 1978, granting costs taxed in favor of Appellees, Wozniak and Campbell, in the amount of ($267.00).

Dated; July 5, 1978